

REMARKS

REJECTION UNDER 35 USC §102(B)

The examiner rejects claims 1-4 under 35 USC §102(b) as anticipated by Bloom et al. (US 3,420,851). In particular, the examiner asserts that Example I of this reference anticipates the presently claimed process. Applicants respectfully traverse this rejection. To anticipate a claim, each and every element as set forth in the claim must be found, either expressly or inherently described, in the prior art reference (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987)). These requirements are not met by the cited reference.

The present claims require that water- and/or solvent-wet phenoxymethylbenzoic acids be dried at a temperature from 1° to 25°C above the melting point of the phenoxymethylbenzoic acid under the utilized reaction conditions. Bloom discloses a process for making 2-phenoxymethylbenzoic acid, with steps including drying the product with anhydrous sodium sulfate and evaporating the residual benzene (col.12:23-24). The reference indicates that this substance has a melting point of from 118 to 122 °C. A "more highly purified" sample, recrystallized from ethanol, is reported to have a melting point of from 125.5 to 126.5°C (col.12:26-28).

Under the processing conditions, it is apparent that the 2-phenoxymethylbenzoic acid, itself, has a melting point which is at least from 125.5 to 126.5 °C. Accordingly, it is logically inconsistent for Bloom to teach drying a water- and/or solvent-wet sample of this compound at a temperature above this melting point when the cited example only reports raising the sample to a maximum temperature of 122 °C. Given these melting

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point values, the water- and/or solvent-wet 2-phenoxyethylbenzoic acid sample would need to be heated to a temperature of at least 127.5°C to meet the present claim limitations. Given the possibility that more highly purified samples would give an even higher reported melting point value, the actual minimum temperature needed to meet the claim limitations is likely to be even higher.

Bloom reports a melting point determination, yet does not report a drying step in which the temperature is raised to a point above the determined melting point. Accordingly, Bloom does not teach all elements of the presently claimed invention. Applicants respectfully request that the rejection under 35 USC §102(b) based on Bloom be withdrawn, and that the case be passed to issue.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11-0345. Please credit any excess fees to such deposit account.

Respectfully submitted,  
KEIL & WEINKAUF

A handwritten signature in black ink, appearing to read 'David C. Liechty', with a long horizontal flourish extending to the right.

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